

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ARY JEWELERS, LLC,

Plaintiff,

v.

IBJTC BUSINESS CREDIT CORPORATION
and DAVID MOLINARIO,

Defendants.

)
)
)
)
)
) Civil Action No. 04-10281-EFH
)
)
)
)
)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the Federal Rules of Civil Procedure, defendants IBJTC Business Credit Corporation and David Molinario respectfully move for summary judgment against the plaintiff, ARY Jewelers, LLC on all counts of its Second Amended Complaint. In support of this Motion, the defendants submit the accompanying Statement of Undisputed Material Facts pursuant to Local Rule 56.1, the Affidavit of Steven Cole, the Affidavit of Francis D. O'Connor, Jr. with attached exhibits, the Affidavit of Kate Cimini, Esq. with attached exhibits, and a Memorandum of Law in Support of their Motion. As these materials demonstrate, there is no genuine issue of material fact, and the defendants are entitled to judgment as a matter of law.

Defendants respectfully request that this Court hear oral argument on this Motion inasmuch as oral presentation and questioning by the Court will assist it in adjudicating the issues raised herein.

WHEREFORE, defendants respectfully request that their Motion be allowed and that the Second Amended Complaint be dismissed in its entirety.

IBJTC BUSINESS CREDIT CORPORATION
and DAVID MOLINARIO
By their attorneys,

/s/ Christopher R. Dillon

Christopher R. Dillon (BBO No. 640896)

Kate Cimini (BBO No. 654336)

Ropes & Gray LLP

One International Place

Boston, Massachusetts 02110-2624

(617) 951-7000

Robert S. Fischler (Admitted Pro Hac Vice)

Ropes & Gray LLP

45 Rockefeller Plaza

New York, NY 10111

(212) 841-5700

Dated: October 24, 2005

Local Rule 7.1(A)(2) Certification

I, Robert S. Fischler, attorney for the IBJTC Business Credit Corporation and David Molinaro hereby certify that I have conferred with counsel for ARY Jewelers, LLC regarding the subject of the instant motion and we attempted in good faith to resolve or narrow the issues raised by the instant motion.

/s/ Robert S. Fischler

Robert S. Fischler

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2005, copies of the foregoing Motion for Summary Judgment, Memorandum of Law in Support of Defendants' Motion for Summary Judgment, Statement of Undisputed Material Facts, Affidavit of Kate Cimini and attached exhibits, Affidavit of Steven Cole, and Affidavit of Francis D. O'Connor, Jr. and attached exhibits were served on counsel for the plaintiff Stephen P. Carrigan, The Carrigan Law Firm, LLP, 202 Houston Center, 909 Fannin, Suite 1575, Houston, TX 77010 by United States mail.

/s/ Kate Cimini

Kate Cimini